

AMOUNT \$ 150.00
SUMMONS ISSUED N
LOCAL RULE 4.1
WAIVER FORM
MOF ISSUED
BY DPTY. CLK. CMB
DATE 5-7-04

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WINARD CONSTRUCTION)
& DEVELOPMENT, INC.)
Plaintiff,)
)
v.)
)
TIMOTHY HARRINGTON,)
Defendant.)

Civil Action No. **04-10915 GAO**
NOTICE OF REMOVAL
(28 U.S.C. § 1446)

MAGISTRATE JUDGE Boulter

**NOTICE OF REMOVAL OF CIVIL ACTION
TO UNITED STATES DISTRICT COURT**

Defendant, by and through his attorneys and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby gives notice of his intent to remove Civil Action No. 04-201 from the Commonwealth of Massachusetts, Superior Court Department, Barnstable (the "State Court"), and in support thereof, Defendant states as follows:

1. Timothy Harrington is the named Defendant in the civil action filed in the State Court.
2. Pursuant to 28 U.S.C. §§ 1441 and 1446, Timothy Harrington removes this action to the United States District Court for the District of Massachusetts, which is the judicial district in which the action is pending.
3. The grounds for removal of this action are diversity of citizenship jurisdiction, in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
4. Defendant Timothy Harrington is an individual residing in Florida, as Plaintiff alleges in the Amended Complaint.

5. Plaintiff, Winard Construction & Development, Inc. alleges in its Amended Complaint. that it is a Massachusetts corporation with its principal place of business in Florida. Plaintiff alleges an amount in controversy to exceed \$75,000.00, exclusive of interest and costs.

6 Removal of this action, therefore, is proper under 28 U.S.C. § 1441 because this is a civil action brought in state court over which the federal district courts would have had original jurisdiction had the action been commenced in federal court.

7. This Notice of Removal is timely under 28 U.S.C. § 1446(b). Plaintiff's counsel sent Defendant's counsel a copy of the Amended Complaint, which Defendant's counsel received on May 6, 2004. The Notice of Removal is being filed within 30 days of receipt of the Amended Complaint; therefore, it is timely filed.

8. Pursuant to 28 U.S.C. § 1446(d), Timothy Harrington is filing a copy of the Notice of Removal with the Clerk of the State Court and serving a copy on Plaintiff.

9. Attached hereto as Exhibit A are copies of all state-court papers received from Plaintiff's counsel at the time of removal.

WHEREFORE, Timothy Harrington files this Notice of Removal of this action from the aforesaid Barnstable County Superior Court, in which it is now pending, to the District Court of the United States for the District of Massachusetts.

TIMOTHY HARRINGTON,

By his attorney,



Peter F. Carr, II, BBO #600069
ECKERT SEAMANS CHERIN & MELLOTT, LLC
One International Place, 18th Floor
Boston, MA 02110-2602
617.342-6800
Facsimile: 617.342-6899

Dated: 5/7/04

Blank and Solomon
Law Offices

GARRY N. BLANK
DANIEL SOLOMON

260 South 130
Sandwich, Massachusetts 02563
(508) 888-5900
Fax 508-5925

May 6, 2004

11 Beacon Street
Boston, Massachusetts 02108
(617) 567-5800
Fax 567-5880

Stephen T. Kunian, Esq.
1 International Place
Boston, MA 02110

Via facsimile #617-342-6899
and regular mail

re: Winard vs. Harrington
Barnstable Superior Court #04-201

Dear Attorney Kunian:

Thank you for agreeing to accept service herein. Enclosed is the original Summons together with a copy of the Amended Complaint filed on May 6, 2004. Kindly complete the Proof of Service of Process on the Summons and return it to me for filing with the Court. I have also enclosed a copy of the Tracking Order.

I look forward to hearing from you soon.

Sincerely,


Garry N. Blank

GNB/phb
Encl.

(TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: CONTRACT TORT
MOTOR VEHICLE TORT EQUITABLE RELIEF OTHER)

Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT
No. 04-201

Winard Construction & Development, Inc.

VS.

Timothy Harrington

SUMMONS

To the above-named defendant : Timothy Harrington

You are hereby summoned and required to serve upon Garry N. Blank, Esq.

Blank and Solomon, 449 Route 130, Sandwich, MA 02563 plaintiff's attorney, whose address is
complaint which is herewith served upon you, within 20 days after service of this summons upon you,
exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the
relief demanded in the complaint. You are also required to file your answer to the complaint in the office
of the Clerk of this court at Barnstable either before service upon plaintiff's attorney or within a reasonable
time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

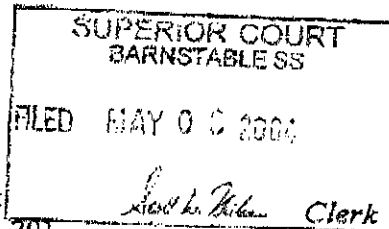
Witness, SUZANNE V. DEL VECCHIO Esquire, at Barnstable, the 26th
day of April in the year of our Lord two thousand and four

Scott W. Nickerson Clerk

NOTE: When more than one defendant is involved, the names of all defendants shall appear in the caption. If a
separate summons is issued for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT

You need not appear personally in court to answer the complaint but if you claim to have a defense,
either you or your attorney must serve a copy of your written answer within 20 days as specified
herein and also file the original in the Clerk's office.



Barnstable, ss

COMMONWEALTH OF MASSACHUSETTS

Superior Court Dept
Civil Action No. 04-201

Winard Construction & Development, Inc.,
Plaintiff

BK 18556 Pg 204 #35316
05-06-2004 @ 01:22P

vs.

Timothy Harrington

Defendant

Amended Complaint

The Verified Complaint is hereby amended by changing the amount due to Plaintiff to \$201,401.27 and substituting Exhibit "A" reflecting a balance due of \$201,401.27 for Exhibit "A" initially filed and reflecting a balance due of \$203,044.34.

Parties, Jurisdiction and Venue

1. Plaintiff Winard Construction & Development, Inc. ("Winard") is a Massachusetts corporation with an usual place of business in Provincetown, Barnstable County, Massachusetts. Plaintiff brings this action on its own behalf and in behalf of all other persons in interests.
2. Defendant Timothy Harrington ("Harrington") is an individual residing at 309 E San Marco Drive, Miami Beach, FL 33139.
3. 412 Commercial Street, Provincetown, MA 02657 (the "Premises") is a residence owned by Defendant.

COUNT I

4. Plaintiff repeats and realleges paragraphs 1 through 3 as though fully set forth herein.
5. At all times relevant hereto, Harrington has owned the Premises located at 412 Commercial Street, Provincetown, MA.
6. Plaintiff was hired by Defendant to perform a major renovation on the old, decrepit premises at 412 Commercial Street, Provincetown pursuant to a proposal dated December 2, 2002 in the amount of \$224,000.00 exclusive of "extras" and "unforeseens". The Parties signed the agreement and Defendant made a \$10,000.00 deposit.
7. Not long after commencing work on the premises, Plaintiff found hidden and unforeseeable conditions and realized that due to the poor condition of the building, the project had been seriously underbid. Plaintiff immediately contacted Defendant. Defendant assured Plaintiff that he understood and not to worry about the additional cost; he would make Plaintiff whole.
8. Defendant requested more than \$58,000.00 in "extras".

M.R. BOOK 18/32 PAGE 20

9. Plaintiff performed all work asked of him in a good, workmanlike manner, in good faith and with the reasonable expectation of timely payment.

10. Defendant was billed periodically, but always made partial payments, causing him to fall farther and farther behind.

11. Defendant has made payments totaling \$240,000.00 against billings of \$441,401.27. Defendant has failed to make any additional payment to Plaintiff and the amount of \$201,401.27 remains outstanding in accordance with the account annexed hereto as Exhibit "A".

WHEREFORE, Plaintiff prays for judgment against Defendant in the amount of \$201,401.27 plus interest, costs and attorney fees.

COUNT II

12. Plaintiff repeats and realleges paragraphs I through II as though fully set forth herein.

13. Plaintiff has supplied all the work, labor and materials as aforesaid for the benefit of the Defendant for which Plaintiff seeks a judgment in quantum meruit for the value of its work, labor and materials provided to the Defendant, plus interest, costs and attorney fees.

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Enter Judgment against the Defendant in the amount of \$201,401.27 plus interest and all costs;
2. grant other and further relief as this Court deems just and mete.

Respectfully submitted
by Attorneys for Plaintiff

Date: May 6, 2004

Garry N. Blank, BBO#045330
Daniel Solomon, BBO#472580
Blank and Solomon
449 Route 130
Sandwich, MA 02563
(508)888-5900

WINARD
CONSTRUCTION & DEVELOPMENT, INC.
Licensed General Contracting #014085
(508) 487-2538 - Hal Winard
P.O. Box 1002, Provincetown, Ma. 02657

HARRINGTON RESIDENCE
412 COMMERCIAL STREET

FINAL STATEMENT SUMMARY
4/7/04

Statement I.	\$ 84,671.85
Statement II.	188,964.28
Statement III.	138,584.75
Statement IV.	29,180.39

TOTAL COST OF PROJECT:	\$441,401.27
TOTAL PAYMENTS RECEIVED:	240,000.00

BALANCE DUE: **\$201,401.27**

"A"

**Commonwealth of Massachusetts
County of Barnstable
The Superior Court**

CIVIL DOCKET# BACV2004-201-A

RE: Winard Construction & Development Inc v Harrington

TO: Garry N Blank, Esquire
Blank & Solomon
449 Route 130
Sandwich, MA 02563

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the fast (F) track as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	07/07/2004
Response to the complaint filed (also see MRCP 12)	09/05/2004
All motions under MRCP 12, 19, and 20 filed	09/05/2004
All motions under MRCP 5 filed	09/05/2004
All discovery requests and depositions completed	02/02/2005
All motions under MRCP 16 served and heard	03/04/2005
Final pre-trial conference held and firm trial date set	09/04/2005
Case disposed	12/04/2005

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.
Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.
This case is assigned to session A sitting in Civil A at Barnstable Superior Court.

Dated: 04/08/2004

BY: Scott W. Nickerson
Clerk of the Courts

Location: Civil A
Telephone: (508) 375-6114

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (517) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tclc>

cvdtrac_2.mpd 382126 1/30/04 bhr/kyg